HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.7116 OF 2006

-
-

Between:

Sanam Venkata Seshagiri Rao S/o Rama Mohan Rao
R/o H.No.33-5-9, Papaiah Veedhi, Seetharampuram
Vijayawada, Krishna District and another

…Petitioners

A n d

Vijayawada Municipal Corporation rep. By its Commissioner,
Vijayawada-1 and others

…Respondents

:: **O R D E R** ::

Counsel for petitioner : Sri P.Venugopal for
M.Srinivasa Swarup

Counsel for respondent No.1 : Smt. G.Jhansi

Counsel for respondent No.2 : Sri Koneti Raja Reddy

Counsel for respondent No.3 : Sri K.V.Bhanu Prasad

9th August 2006

Per G.V.Seethapathy, J

This writ petition has been filed by two individuals in the name of public interest litigation questioning the action of the first respondent-Municipal Corporation allowing the second respondent-Education Society to close all the internal streets in Seetharampuram, Vijayawada by constructing a compound wall and for a consequential direction to the first respondent-Municipal Corporation to remove the said compound wall.

According to the writ petitioners, they purchased the property in which they were residing at Seetharampuram, Vijayawada and the second respondent-Society has blocked the public pathway earmarked as municipal road adjacent to the petitioners' building by constructing a compound wall. The petitioners complain that in spite of several representations made by the petitioners and other residents of the locality to the first respondent-Corporation seeking removal of the obstruction caused by the second respondent to the public pathway, no action was taken by the first respondent. It is further averred in the affidavit filed by the petitioner that previously, one Boyapati Srinivasa Srikrishna filed Writ Petition No.8488 of 2001 and this Court disposed of the same with a direction to the first respondent to make appropriate enquiry after issuing notice to the parties and pass appropriate orders within three weeks. It is also averred in the writ petition that as the Court's direction was not complied with, a contempt case in

C.C.No.1128 of 2001 has been filed, wherein, an unconditional apology was tendered by the Commissioner of the Municipal Corporation. On enquiry, the first respondent informed that they issued notice under Section 452 of Hyderabad Municipal Corporation Act (for brevity `the Act') to the second respondent whereupon; the second respondent filed Writ Petition No.26218 of 2001 and secured stay of all further proceedings. The petitioners further complain that the first respondent being a public authority has not taken any steps to get the stay vacated and cause the obstruction removed to the public pathways but allowed the second respondent to continue the unauthorized occupation of the public pathways. It is also averred in the affidavit filed by the first petitioner that the third respondent is hand in glove with the second respondent in encouraging them to keep the area blocked.

The first respondent-Corporation filed a counter affidavit contending that the site in question is part of NTS No.13 of Block No.1 of Revenue Ward No.11 as per the initial Survey record of the year 1927 and classified as patta land and on resurvey in the year 1964, it was subdivided into NTS Nos.201, 202, 203, 204 of Block No.2 of Ward No.11 and 221, 222, 223, 241, 243, 244, 245 of Block No.4 of Ward No.11. Out of these survey numbers, 202 and 204 of Block No.2 of Ward No.11, and 222 and 241 of Block No.4 of Ward No.11 are proposed for municipal roads on maps, but the land covered by them was not handed over to the municipality and it is still under private possession and is not even marked on ground. It is further averred in the counter affidavit of the first respondent-Corporation that as per the prescribed procedure, the local body has to acquire the land from the owners if required in public interest or if the land owner came out with

a proposal for lay out of the land proposing municipal roads in the above survey numbers and it is only after grant of layout that the proposed roads become municipal roads. The first respondent contends that the proposed road in a scheme or Master plan remains only a proposal until it is implemented by acquiring the land by paying compensation under Land Acquisition Act or approving lay out enforcing proposed roads in the layout. Thus, according to the first respondent-Corporation as the land in question continued to be a private land and was neither acquired nor taken possession under grant of layout permission, it cannot be called a public road or municipal road or a public pathway and so the question of the first respondent removing any obstruction caused by second respondent does not arise.

It is further averred in the counter affidavit filed by the first respondent-Corporation that Writ Petition No.8488 of 2001 filed by Sri Boyapati Srinivasa Srikrishna claiming a share in the land under a gift from his ancestors and seeking a direction against the municipal authorities to stop further construction, has nothing to do with the present writ petition, the subject matter of the two writ petitions not being the same.

The second respondent-Education Society filed a counter affidavit denying that they blocked any pathway or municipal road and contending that the second respondent purchased the land in 1969 and established Sathavahana college in the year 1971 and the college is having a compound wall and there are roads on all the sides of the college and no public interest is involved and the writ petition is filed due to personal vendetta because of the property disputes and pending litigation. It is further averred in the affidavit filed by the

second respondent that earlier writ petition was filed by the son of Boyapati Srinivasa Appa Rao with a mala fide intention as the suit filed by the third respondent was dismissed.

The third respondent filed a counter affidavit contending that one Prajapathi Rao claiming to be the person in charge of second respondent-Society filed suits for specific performance against the third respondent and his wife and the suit O.S.No.110 of 2001 filed against third respondent's wife was dismissed on 17.4.2006 and the suit filed against the third respondent is still pending and the said Prajapathi Rao highhandedly occupied the land and constructed a compound wall. It is further averred in the affidavit filed by the third respondent that there are family disputes between him and his son, who filed suit for partition against him and there is no collusion between him and the second respondent and he never encouraged the second respondent to block the public roads.

The third respondent filed a further reply affidavit denying the averments made in the counter affidavit filed by the first respondent and contending that when he effected sales to third parties in the early sixties, private roads were already formed and handed over to the municipality and so the contention of the first respondent-Corporation that the roads are approved only on the maps is false.

Heard the arguments of learned counsel for both sides and perused the records.

A perusal of the affidavits filed by the parties smack of typical pleadings in a civil suit relating to a property dispute. Though, the writ petition purports to have been filed by way of public interest litigation, it is clear from the averments in the affidavit filed in support of the petition

that individual interest of the petitioners is the principal motivating factor and not the desire to espouse any public cause that has driven the petitioners to file this writ petition. The reference to previous litigation between the parties or their representatives relating to the same subject matter in this Court and the jurisdictional civil Courts and the allegations and counter allegations of collusion among the parties with one another is clearly indicative of the fact that the present writ petition is yet another attempt to settle personal scores and property disputes in the name of public interest.

Learned counsel for the petitioners contended that the second respondent has constructed compound wall blocking the public pathways and municipal roads and in spite of repeated representations against the same by the petitioners and other residents of the locality, the first respondent-Municipal Corporation has not taken any steps to remove the blockade. The affidavit filed by the first petitioner in support of the writ petition does not disclose the particulars of the said property or the details of the alleged encroachment of the public pathways. Except making a bald averment that the second respondent has blocked the public pathways and the first respondent has not taken any action to remove the encroachment, the affidavit of the first petitioner is totally devoid of any particulars of the alleged encroachment like survey number or the extent.

The first respondent-Municipal Corporation has taken a categorical stand that there was only a proposal to lay municipal roads in survey Nos.202 and 204 of Block No.2 of Ward No.11 and 222 and 241 of Block No.4 of Ward No.11, but the land is not marked on the ground nor any steps initiated to acquire the land for the purpose of

roads and possession of the land has not been taken and it continued to be private property in possession of the owners and so the question of first respondent removing any obstruction caused by second respondent does not arise. It is categorically stated in the affidavit of the first respondent that unless the site for the proposed roads is acquired for public purpose or taken possession while granting permission for the layout, the same shall not be called as public road or municipal road or the public pathway.

The second respondent-Education Society, on the other hand, contends that after purchase of the land in 1969, they established a college and constructed buildings and secured their land with a compound wall and there is 80 feet width road abutting the college and there are roads on other sides as well and they have not blocked any public pathway or municipal road.

The third respondent, who was the original owner of the land contends that when he effected sales in the early sixties, private roads were already formed and they were handed over to the municipality.

In view of the rival contentions of the parties, the identity and the nature of the land itself is in dispute. Such a dispute pertaining to title over the land, possession of the land and other questions of fact can never be adjudicated upon in the proceedings under Article 226 of the Constitution of India as they require to be decided upon evidence that may be adduced by the parties in support of their respective contentions in an appropriate proceedings before a civil Court.

It is not disputed that previously the second respondent filed suits for specific performance against the third respondent and his wife

and the suit O.S.No.110 of 2001 filed against the third respondent's wife was dismissed on 17.4.2006 and the other suit is still pending. The third respondent contended in those suits that the second respondent highhandedly occupied the land and constructed compound wall, whereas the second respondent contended that they purchased the land from the third respondent and constructed compound wall around the said land only. It is also not disputed that one Boyapati Srinivasa Srikrishna, son of the third respondent filed Writ Petition No.8488 of 2001 claiming to be a joint owner of the land and questioning the alienation made by third respondent in favour of second respondent while he was a minor and the said writ petition was disposed of with a direction to the first respondent to make an enquiry in to the objections after issuing notice to the parties and pass appropriate orders. In pursuance of the said directions, the first respondent issued notice under Section 452 of the Act and thereupon, the second respondent filed Writ Petition No.26216 of 2001 and interim stay of all further proceedings was granted therein.

It is therefore clear from the above that there have been serious disputes between the parties regarding ownership and possession of the subject land. Such dispute, which is essentially in the nature of an individual civil dispute pertaining to immovable property, cannot be permitted to be raised by way of proceedings under Article 226 of the Constitution of India and that too, under the guise of public interest litigation. In view of clear stand taken by the first respondent-Corporation that the disputed land is not a public pathway or municipal road and no public interest is involved and that it continues to be a private land, which is neither acquired nor taken possession by the Municipal Corporation and in view of the contention of the second

respondent that they constructed a compound wall around the land purchased by them, which has roads abutting on all sides, the complaint of the petitioners that the second respondent has blocked the public pathway remains totally unsubstantiated. No material is placed before the Court by the petitioners to show even prima facie that the second respondent has encroached upon any public pathway or municipal roads as such and blocked the same by constructing compound wall. In the absence of any material in support of their claim, the averments in the affidavit of the petitioners, which are themselves vague, cannot constitute a solid base to lay a claim for the relief prayed for. From the averments in the affidavits of the first petitioner and the counter affidavits of the respondents, it is clear that the present writ petition filed under the garb of public interest litigation is no more than yet another attempt to settle personal scores on account of property disputes. When there is no public pathway or municipal road, which has vested in the first respondent-Municipal Corporation comprised in the disputed land, the question of the second respondent obstructing such public pathway or municipal road, does not arise and issuing any direction to the first respondent-Municipal Corporation for removal of such alleged obstruction equally does not arise.

For the above reasons, it is held that the writ petition is totally devoid of merits and the same is accordingly dismissed. No order as to costs.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

9th August 2006
RAR

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.7116 OF 2006

(Order of the Bench made by
Hon'ble Sri Justice G.V.Seethapathy)

DATED : 09.08.2006